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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/613,814	07/11/2000	Toshio Kobayashi	2038-247	1159

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Lowe Hauptman Gopstein  
Gilman & Berner LLP  
Suite 310  
1700 Diagonal Road  
Alexandria, VA 22314

EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/613814

Applicant(s)

Kobayashi et al.

Examiner

John Guarriello

Group Art Unit

1971

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/11/2003.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-30 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

15. The Examiner acknowledges papers # 9 and 10 of 3/11/2003, RCE, and the amendment.

#### ***Claim Rejections - 35 USC § 112***

16. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

17. Claims 1-14, 20-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In newly amended claim 1 the new matter is “and said component fibers are not knitted or woven together”. In claim 20, “non-textile material” is not supported. This is new matter.

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It is the Examiner's position that no express support is found in the instant specification for the negative limitation in claim 1. Applicant's assertion that the support for the negative limitation in claim 1 is found in the drawings as filed is not persuasive because drawings can be used to explain the claimed invention but drawings do not teach or explain to exclude components.

***Claim Rejections - 35 USC § 102***

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 8, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/38620.

WO'620 describes a laminate material having stretchability and recovery, breathability and barrier properties, (see abstract). WO'620

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describes a nonwoven elastomeric web having at least one web of textile material discontinuously adhesive bonded to each side, (see abstract).

WO'620 describes the basis weight in the range of 6.8 to 204 g/ square meter, (page 11, lines 32-33). WO'620 describes polyester fabric, (page 12, ines 9-14), which fiber is a continuous fiber material, (page 12, lines 13-15).

WO'620 describes polyester yarn or polpropylene spunbonded layers, (see page 16, Examples 1 and 2). It is the Examiner's position that WO'620 describes the essential limitations of the claimed invention. Claims lack novelty.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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20. Claims 5, 6, 11-12, 15-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strack et al. 5,681,645.

Strack describes laminate material with stretchability and recovery, breathability and barrier properties, (see abstract). Strack describes a non-woven elastomeric web having at least one web of textile material discontinuously bonded to each side, (see abstract). Strack describes the laminate with at least two textile webs, a non-elastic textile web with stretch and recovery characteristics, and a textile web with non-woven elastomeric web properties, (column 5, lines 58-67). Strack describe the various kinds of elastomeric web materials, (column 6, lines 22-67). Strack describes the use of the adhesive which laminates the webs together so that the elasticity of the laminate will not be interfered, i.e. interfere with recoverability, (column 9, lines 35-61). Strack describes the use for the laminate, garment with thermal insulation and a dirt barrier to protect the wearer, while having breathability for comfort, (column 11, lines 42-46). Strack differs from the claimed invention because it is silent about the orthogonal stretchability.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to approximate the orthogonal stretchability motivated with the expectation that Strack describes (machine and cross direction, column 9, lines 14-23, like orthogonal stretchability) power recoverability is added to these materials to the extent that they stretch, (column 9, lines 18-19).

Applicant's arguments regarding film have been considered but Strack describes the polyethers and it would be inherent that these would possess film properties since in the broadest sense a nonwoven could be a film, (see column 6, lines 22-35). Regarding moisture permeability, it is the Examiner's position that these properties could be optimized by one of ordinary skill in the art since Strack describes the components of the claimed invention. Regarding nonwoven materials Strack describes these, (column 6, lines 10-40). Regarding the consisting essentially language, it is the Examiner's position that the burden of proof is upon applicant to show any


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distinguishing characteristics that would differentiate from the art of record,  
no evidence is noted.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
John J. Guarriello:gj

Patent Examiner

April 3, 2003

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700